THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3259 of 2007

Dated:22.02.2007

Between:

Chinthanuri Lakshmi.

…Petitioner

and

The Election Officer and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3259 of 2007

ORDER:

Elections to Sarpanch and Ward Members of Gram Panchayat, Kuravi Village and Mandal in Warangal District were held on 12.02.2007 between 7.00 am and 1.00 pm. After the elections, counting took place. The first respondent, namely, the Election Officer, Stage-II, conducted counting and announced particulars in Form-26. The fifth respondent secured 1343 votes, whereas the petitioner herein secured 1340 votes. Alleging that the first respondent failed to count doubtful votes, and announced the results in Form No.26, the petitioner allegedly gave a representation on 12.02.2007 to the first respondent seeking recount of the votes of Sarpanch election. However, the first respondent issued a Declaration and Certificate in Form No.27 in favour of the fifth respondent as duly elected. Aggrieved by the same, the present Writ Petition is filed seeking a writ of mandamus declaring the action of the first respondent in declaring the fifth respondent as Sarpanch as illegal and arbitrary. The petitioner also seeks a consequential direction to the respondents to recount the votes polled in the election.

Article 243-O of the Constitution of India mandates that no election to any Panchayat shall be called in question except by an Election Petition presented to a duly constituted authority/Tribunal. Under Section 233 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'), an election shall be called in question only by way of an Election Petition, and therefore, this Writ Petition is not maintainable. This aspect of the matter was dealt with in the decisions of Full Benches of this Court in **A.P.Sarpanchas Association v. Govt. of A.P.**[1] and **G.Kanaka Durga v. State Election Commissioner**[2]. Further in **C.Subrahmanyam v. K.Ramanjaneyulu**[3], the Supreme Court held that even if

the election is challenged on the ground of non-compliance of the provisions of the Act or the Conduct of Election Rules, the Writ Petition would not be maintainable and it is only by way of Election Petition that such thing can be challenged. This is well settled, and the legal position is not denied by the learned Counsel for the petitioner.

Therefore, giving liberty to the petitioner to approach the appropriate authority/Tribunal, this Writ Petition is dismissed. No costs.

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(V.V.S.RAO, J)

22.02.2007
vs

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[1] 2001(4) ALT 309 (FB)

[2] 2001(4) ALT 476 (FB)

[3] (1998) 8 SCC 703